

UNITED STATES DISTRICT COURT  
for the  
Eastern District of Wisconsin

FIREMAN'S FUND INSURANCE COMPANY  
as subrogee of City of Racine

*Plaintiff(s)*

v.

RACINE ZOOLOGICAL SOCIETY

*Defendant(s)*

PROCESS SERVER  
TIME 12:30 AM/PM DATE 06/01/21  
( ) PERSONAL ( ) SUBSTITUTE  
( ) POSTED (X) CORPORATE

Civil Action No. 21-cv-642

SUMMONS IN A CIVIL ACTION

To: Racine Zoological Society  
c/o Joanne Dean, Registered Agent  
200 Goold Street  
Racine, WI, 53402

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you receive it) – or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12(a)(2) or (3) – you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or the plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: May 24, 2021

GINA M. COLLETTI, CLERK

s/ Linda M. Zik, Deputy

*Signature of Clerk or Deputy Clerk*



EXHIBIT

A

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN  
MILWAUKEE DIVISION**

FIREMAN'S FUND	)	
INSURANCE COMPANY,	)	
as subrogee of City of Racine,	)	
	)	
Plaintiff,	)	Case No.:
	)	
v.	)	
	)	
RACINE ZOOLOGICAL SOCIETY	)	
	)	
Defendant.	)	

**COMPLAINT**

NOW COMES THE PLAINTIFF, Fireman's Fund Insurance Company, as subrogee of the City of Racine, Wisconsin, by and through its undersigned counsel, complaining of defendant, and for its Complaint against defendant, states as follows:

**PARTIES**

1. Plaintiff, Fireman's Fund Insurance Companies (hereinafter "Fireman's Fund"), is a corporation duly organized and existing under the laws of the State of California, with its principal place of business located at 225 W. Washington Street Chicago, Illinois 60606 which at all relevant times was engaged in the insurance business and was licensed to issue insurance policies in the State of Wisconsin.

2. Plaintiff's insured, the City of Racine, is a municipal corporation of the State of Wisconsin (hereinafter the "City") with its principal place of business located at 730 Washington Avenue, Racine, Wisconsin 53403.

3. Defendant, Racine Zoological Society (hereinafter the "Society"), is a Wisconsin non-stock corporation duly organized and existing under the laws of the State of Wisconsin with its principal place of business located at 200 Goold Street, Racine, Wisconsin 53402.

#### **JURISDICTION AND VENUE**

4. Jurisdiction of this court is invoked pursuant to the provisions of 28 U.S.C. § 1332 by reason of diversity of citizenship of the parties. The matter in controversy, exclusive of interests and costs, exceeds the sum of \$75,000. Venue is properly laid in this district pursuant to the provisions of 28 U.S.C. § 1391.

#### **GENERAL ALLEGATIONS**

5. At all relevant times, the City owed the real and business property known as the Lakeview Community Center located at 201 Goold Street, Racine, Wisconsin 53406 (hereinafter the "Center").

6. At all relevant times, plaintiff Fireman's Fund insured the Center.

7. On or about August 2, 2019, the Society entered into a rental agreement titled Community Center Rental Request Form (hereinafter "Rental Request Form") with the City to rent the Center for the period from August 15, 2019 through October 15, 2019. A true and correct copy of the Rental Request Form is attached hereto and incorporated herein as Exhibit A.

8. Pursuant to the terms of the Rental Request Form, the renter assumed responsibility for any and all damages done to the center and/or to its contents.

9. On or about September 11, 2019, a fire occurred at a cooking stove in the Center which was left on and unattended by a guest invited by the Society, causing a fire that spread throughout the Center (hereinafter the "Fire Loss").

10. As a result of the Fire Loss, the City sustained severe and extensive damage to its real and business property and lost income and incurred expenses to repair the damage.

11. Pursuant to the terms and conditions of the aforementioned insurance policy, Fireman's Fund made payments to the City in excess of Nine Hundred Sixty-Seven Thousand, Three Hundred Twenty-Two Dollars and Twenty-Seven Cents (\$967,322.27), representing the fair and reasonable value of and/or cost to repair the damages.

12. In accordance with common law principles of equitable and legal subrogation and the terms of the insurance policy, Fireman's Fund is subrogated to the rights of the City to the extent of the payments it makes to the City in compensation for the aforementioned damages.

#### **COUNT 1 – NEGLIGENCE**

13. Plaintiff re-alleges the foregoing paragraphs as though fully restated herein.

14. Defendant owed the City of Racine a duty to use and operate the premises of the Center in a good and safe manner, and to make sure that it was used and operated in a manner so as to protect the property from hazardous conditions that could cause fires.

15. The Fire Loss was caused by the negligence and carelessness of defendant and/or by and through its agents, servants, and/or employees, acting within the course and scope of their employments, as follows:

- a) Failure to exercise reasonable and due care in the supervision and oversight of guests or invitees, including those using and operating equipment that could cause a fire;
- b) Failure to supervise the use and/or operation of kitchen equipment in a safe and reasonable manner, including allowing and/or leaving the stove on and unattended;

- c) Failing to adequately inspect the kitchen and kitchen equipment before use and operation;
- d) Failing to employ agents, servants and/or employees with proper certification, knowledge, training and experience to operate kitchen equipment safely;
- e) Failing to ensure invitees or guests possessed the proper certification, knowledge, training and experience to operate kitchen equipment safely;
- f) Failing to properly train, oversee and supervise its agents, servants, guests, invitees and/or other persons who used or accessed the kitchen;
- g) Failing to ensure invitees or guests are properly trained who used or accessed the kitchen and steps to take in the event of a fire hazard;
- h) Failing to take adequate and necessary precautions to prevent a fire from originating in the premises;
- i) Failing to ensure that proper and reasonable safety precautions and equipment were in place, including fire extinguisher(s);
- j) Allowing a fire hazard to exist within its leased premises;
- k) Otherwise failing to use due care under the circumstances.

16. As a direct and proximate result of defendant's negligence and carelessness, its agents, servants and/or employees acting within the scope of their employment, the City sustained severe and extensive damages.

17. In accordance with the terms of the Policy, Fireman's Fund made payments to the City for its aforesaid damages, and is therefore subrogated to the right of recovery to the extent of the payments made.

THEREFORE, Plaintiff Fireman's Fund, as subrogee of the City of Racine, hereby demands judgment in its favor against Defendant Racine Zoological Society, in an amount of \$967,322.27, together with interest, the cost of this action, attorney's fees, and such other relief as this Court deems just and proper.

**COUNT 2 – BREACH OF CONTRACT**

18. Plaintiff re-alleges the foregoing paragraphs as though fully restated herein.
19. Prior to the Fire Loss, the City and the Society entered into the Rental Request Form. *See Exhibit A.*
20. The Society, by and through its agents, servants and/or employees, breached the aforementioned contract by committing one or more of the following acts and/or omissions:
  - a) Failure to exercise reasonable and due care in the supervision and oversight of guests or invitees, including those using and operating equipment that could cause a fire;
  - b) Failure to supervise, use and/or operate kitchen equipment in a safe and reasonable manner, including allowing and/or leaving the stove on and unattended;
  - c) Failing to adequately inspect the kitchen and kitchen equipment before use and operation;
  - d) Failing to employ agents, servants and/or employees with proper certification, knowledge, training and experience to operate kitchen equipment safely;
  - e) Failing to ensure invitees or guests possessed the proper certification, knowledge, training and experience to operate kitchen equipment safely;

- f) Failing to properly train, oversee and supervise its agents, servants, guests, invitees and/or and other persons who used or accessed the kitchen;
- g) Failing to ensure invitees or guests are properly trained who used or accessed the kitchen and steps to take in the event of a fire hazard;
- h) Failing to take adequate and necessary precautions to prevent a fire from originating in the premises;
- i) Failing to ensure that proper and reasonable safety precautions and equipment were in place, including fire extinguisher(s);
- j) Allowing a fire hazard to exist within its leased premises;
- k) Otherwise failing to use due care under the circumstances.

21. By and through the Society's breach of contract, the City sustained damages in the amount of \$967,322.27.

22. In accordance with the terms of the Policy, Fireman's Fund made payments to the City for its aforesaid damages, and is therefore subrogated to the right of recovery to the extent of the payments made.

THEREFORE, Plaintiff Fireman's Fund hereby demands judgment in its favor against Defendant, in an amount in excess of \$967,322.27, together with interest, the cost of this action, attorney's fees, and other such relief as this Court deems just and proper.

**Jury Demand**

Plaintiff demands a trial by jury of this matter.



Respectfully Submitted,

FIREMAN'S FUND INSURANCE COMPANY  
as subrogee of City of Racine

By: /s/Philip T. Carroll  
Philip T. Carroll  
COZEN O'CONNOR  
123 North Wacker Drive, Suite 1800  
Chicago, Illinois 60606  
Phone: (312) 382-3147  
Fax: (312) 382-3180  
pcarroll@cozen.com



# EXHIBIT A

## Print Form

# COMMUNITY CENTER RENTAL REQUEST FORM

- Today's Date: 8/2/19 Community Center Requested: LAKEVIEW
- Date(s) of Reservation: 8/15/19 - 10/15/19 Time Start/End: All Day
- Purpose of Reservation: Lantern Festival at the Racine Zoo Expected Attendance: 30
- Renter's Name: Beth Heidorn Organization (if any): Racine Zoo
- Street Address: 200 Goold Street City: Racine St: WI Zip: 53402
- Email Address: bheidorn@racinezoo.org Telephone #: 262-636-9291
- Alternate Contact Name: Chelsea Locke Alternate Contact Telephone #: 239-595-4962

Will admission be charged? ☐ Yes ☒ No

Will food or merchandise be sold? ☐ Yes ☒ No

Will malt beverages be sold? ☐ Yes ☒ No

Will malt beverages be consumed? ☐ Yes ☒ No

Other set up requests: \_\_\_\_\_

Will donations be solicited? ☐ Yes ☒ No

Is this a sporting event? ☐ Yes ☒ No

Will tables & chairs be needed? ☐ Yes ☐ No

Chairs # \_\_\_\_\_ Tables # \_\_\_\_\_

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